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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/736,188	12/15/2003	Katherine S. Bowdish	ALEX-P03-060	4387
28120	7590	07/26/2006	EXAMINER	
FISH & NEAVE IP GROUP ROPES & GRAY LLP ONE INTERNATIONAL PLACE BOSTON, MA 02110-2624			DUFFY, BRADLEY	
			ART UNIT	PAPER NUMBER
			1643	

DATE MAILED: 07/26/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/736,188

Applicant(s)

BOWDISH ET AL.

Examiner

Brad Duffy

Art Unit

1643

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 8 August 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5, 7-11, 13-17, 19-23 and 25-55 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) 1-5, 7-11, 13-17, 19-23 and 25-55 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This election/restriction requirement sets forth multiple elections applicable to the Inventions of Groups I-IV (see item nos. 2 and 3 below).

Election/Restrictions

2. Restriction to one of the following inventions is required under 35 U.S.C. 121:
- I. Claims 1-3, 25-30, 49 and 52, drawn to a method of determining whether OX-2/CD200 is upregulated in a subject and administering to those subjects in which CD200 is upregulated a polypeptide that binds OX-2/CD200, classified in class 435, subclass 7.1.
 - II. Claims 1, 4, 5, 25-30 and 49, drawn a method of determining whether OX-2/CD200 is upregulated in a subject and administering to those subjects in which CD200 is upregulated a polypeptide that binds OX-2/CD200 receptor, classified in class 424, subclass 9.1.
 - III. Claims 7-9, 13-15, 19-21, 31-48, 50, 51 and 53-55, drawn to a method of treating a disease state wherein OX-2/CD200 is upregulated by administering a polypeptide that binds OX-2/CD200, classified in class 424, subclass 138.1.
 - IV. Claims 7, 10, 11, 13, 16, 17, 19, 22, 23, 31-48, 50 and 51 drawn to a method of treating a disease state wherein OX-2/CD200 is upregulated by administering a polypeptide that binds OX-2/CD200 receptor, classified in class 424, subclass 143.1.

3. The above groups all contain claims limiting antibodies' structures to multiple SEQ ID NOS from distinct antibodies. Since there are sequence differences in these SEQ ID NOS, there are structural and functional differences inherent in these antibodies. Therefore, applicant is further required under 35 U.S.C. 121 in this restriction requirement to elect one of A-C, each comprising a set of CDRs from the same light chain and one of D-F, each comprising a set of CDRs from the same heavy chain. Alternatively, applicant may elect a single disclosed variable light chain sequence and a single disclosed variable heavy chain sequence. Applicant is advised that this is not an election of species requirement.

Elect one of:

- A. SEQ ID NOS: 5, 21, 29
- B. SEQ ID NOS: 12, 23, 37
- C. SEQ ID NOS: 13, 23, 38

and one of:

- D. SEQ ID NOS: 50, 69, 88
- E. SEQ ID NOS: 55, 74, 93
- F. SEQ ID NOS: 56, 75, 94

4. The inventions are distinct, each from the other because of the following reasons:

The methods of Inventions of Groups I-IV differ in the method objectives, parameters and in the reagents used. The invention of Group I recites determining if OX-2/CD200 is upregulated and then administering a polypeptide that binds OX-

2/CD200 if OX-2/CD200 is upregulated. The invention of Group II recites determining if OX-2/CD200 is upregulated and then administering a polypeptide that binds OX-2/CD200 receptor if OX-2/CD200 is upregulated. The invention of Group III recites treating a disease wherein OX-2/CD200 is upregulated by administering a polypeptide that binds OX-2/CD200. The invention of Group IV recites treating a disease wherein OX-2/CD200 is upregulated by administering a polypeptide that binds OX-2/CD200 receptor.

The inventions of Groups I-II and III-IV are directed to methods that recite structurally and functionally distinct elements and are not required one for the other. The inventions of Groups I and III require polypeptides/antibodies that bind OX-2/CD200, which is not required by any of the other groups. The inventions of Group II and IV require polypeptides/antibodies that bind OX-2/CD200 receptor, which is not required by any of the other groups. Thus, the inventions of Groups I-II and III-IV are directed to methods that recite structurally and functionally distinct elements, and are not required one for the other. The examination of all groups would require different searches in the U.S. Patent shoes and the scientific literature and would require the consideration of different patentability issues. Thus, the inventions of Groups I-IV are separate in having different method objectives, parameters and reagents used and are patentably distinct.


5. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject


matter and/or different classifications, restriction for examination purposes as indicated is proper.

6. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(I).

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brad Duffy whose telephone number is (571) 272-9935. The examiner can normally be reached at Monday through Friday from 7:00 AM to 4:00 PM. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Larry Helms, can be reached at (571) 272-0832. The official fax number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Respectfully,
Brad Duffy 
571-272-9935


David Blanchard
AU 1643